



POLICE DEPARTMENT

January 30, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jose Tavaréz
Tax Registry No. 949716
Manhattan Court Section
Disciplinary Case No. 2012-6752

The above-named member of the Department appeared before me on September 25, 2012, charged with the following:

1. Said Probationary Police Officer Jose Tavaréz, while assigned to the 44th Precinct, on or about December 11, 2011, while off-duty and in Bronx County, was taken into custody by store security after exiting a Target store with merchandise he did not pay for and failed to notify the Department of the incident.

P.G. 212-32, Page 1, Paragraphs 1 & 2 OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE
SERVICE

2. Said Probationary Police Officer Jose Tavaréz, while assigned to the 44th Precinct, on or about December 11, 2011, while off-duty and in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Probationary Police Officer Tavaréz knowingly exited a Target store with merchandise that he did not pay for.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED
CONDUCT

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 1. Respondent is found Not Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on December 11, 2011, while he was off-duty, Respondent and his then-girlfriend Christina Melendez entered a Target store located in Bronx County; that they walked around the store taking merchandise off of shelves and placing them into a shopping cart; that when they were finished shopping they went to a cashier at a checkout counter; and that after they passed through the checkout counter Respondent was pushing the shopping cart toward the exit door when he was stopped by store security agents and accused of having shoplifted two boxes of condoms.

The Department's Case

The Department called Juan Sime, Yosef Messina, and Sergeant Eusebio Perez as witnesses.

Juan Sime

Sime was employed as an Asset Protection Specialist at Target during 2009. As part of his assigned duties, Sime conducted surveillance of the sales floor for any behavior that would cause him to suspect that a person was possibly engaged in theft. During his employment as an Asset Protection Specialist at Target, Sime apprehended about 150 individuals.

On December 11, 2011, Sime worked from 10:00 a.m. to 6:45 p.m., and was assigned to maintain live surveillance of the sales floor while working in plainclothes. Sime was conducting live video surveillance from the camera room in the front of the store when he first observed Respondent in the aisle where condoms were stocked. Sime testified that Respondent was browsing in the condom aisle for approximately seven minutes while in the company of a female who was later identified as Melendez. Respondent was observed removing two boxes of condoms from the shelf and placing the boxes in the child seat area of a shopping cart. Sime observed that Respondent's coat was draped over the child seat area of the shopping cart. Respondent's actions of placing the two boxes of condoms in the child seat of the shopping cart beneath a coat drew Sime's attention.

When Respondent and Melendez went to the checkout counter, Sime observed their actions at the checkout counter. He saw Melendez purchase various grocery items using an Electronic Benefit Transfer (EBT) card. Respondent purchased several board games. Sime did not observe Respondent purchase the two boxes of condoms at the checkout counter nor did Sime see him remove the two boxes of condoms from the shopping cart while at the checkout counter. After making their purchases, Respondent

and Melendez went to a Pizza Hut restaurant located inside Target which is a few feet away from the checkout counter. Sime observed Respondent and Melendez purchase food at the Pizza Hut and sit down at a table to eat it. After they finished eating, Melendez got up from the table and walked over to a garbage container to throw out their trash. Sime observed Respondent get up from his seat and put on his coat. After he put on his coat, he picked up the two boxes of condoms that were on the child seat area of the shopping cart and place the two boxes of condoms into a plastic Target shopping bag which contained items that had been paid for at the checkout counter. Sime testified that everything he had observed up to this point he had seen on a monitor displaying live video feed from surveillance cameras positioned at various points on the ceiling of the store.

As Respondent and Melendez were walking toward the front exit doors, Sime left the security office to intercept them at the exit doors. Yosef Messina, the executive team leader of asset protection, remained in the security office to continue video observation of Respondent and Melendez. At the exit doors, Sime approached Respondent and Melendez who were on their way out of the store. After identifying himself as a Target security agent, Sime asked Respondent to accompany him to the asset protection office. Respondent voluntarily complied with Sime's request and together they walked to the asset protection office.

Sime confirmed that the video feed from the surveillance cameras depicting Respondent's actions of selecting condoms, purchasing items at the checkout counter, consuming food, attempting to exit the store, and interacting with asset protection

personnel in the security office were “burned” onto a compact disc (CD). [This CD was entered into evidence as Department’s Exhibit (DX) 1.]

Sime confirmed that the time entries depicted on the CD accurately reflected the times at which the images were actually being recorded. Sime acknowledged that his observation of Respondent placing the second box of condoms into the coat covered child seat area of the shopping cart, exiting the condom aisle, and walking to the checkout counter were not recorded onto the CD. Sime admitted that it was his unfamiliarity with the computer software used to record video onto the CD that resulted in these actions not being transferred onto the CD. Sime recalled that the CD was turned over to the Department approximately two or three days after the incident.

At the time Respondent entered the security office with Sime, approximately three asset protection employees were present. Sime retrieved and photographed the two boxes of condoms after he removed them from the bag where Respondent had placed them. The price of the two boxes of condoms, not including sales tax, was \$11.03. Sime stated that store security did not notify the Department about this incident because it is Target’s policy not to press charges where the merchandise that was stolen has a value under \$20.00.

Inside the security office, Respondent told Sime and the other security officers that he was a police officer and that they were making a mistake. Dany Bastien, an executive team leader of assets protection, was in the security office with Respondent and Sime. Sime recalled that he heard Bastien tell Respondent that the store has a good relationship with the 44 Precinct and that this incident would be kept confidential. Sime

observed Respondent voluntarily sign a standard "Assets Protection Admission Statement" (DX 2).

Prior to signing the statement, Respondent requested to be allowed to make a telephone call. Respondent said that he was a new police officer and that he was not sure if he should sign the statement and that he needed to speak to his delegate. Although it is Target's policy to not allow alleged shoplifters to make a phone call, Respondent was allowed to do so because he was a police officer. After completing his phone call, Respondent signed the statement (DX 2). Sime testified that neither he nor anyone else who was present told Respondent that he would not be allowed to leave the office unless he signed the statement.

On cross-examination, Sime said that he stopped Respondent while he tried to walk out of the store. Sime identified himself as a Target security agent and asked Respondent to come with him because Respondent had unpaid merchandise. Sime stated that Target's procedure was that if an alleged shoplifter refused to follow the agent to the security office, then the agent would be allowed to use reasonable force to detain the alleged shoplifter but that the agent was required to disengage if the situation "gets out of hand."

Sime agreed that at the checkout counter Respondent had purchased more than 20 items and that some of the items were purchased with an EBT card and other items were paid for with cash. Sime later learned that Melendez had purchased vitamins with cash. Inside the security office, Respondent was asked to remove everything from his pockets. Sime testified that if Respondent had refused to comply, he would have been placed in the holding cell. Respondent did comply but he was still placed into the holding cell.

Sime testified that Respondent was not free to leave. Sime wrote down Respondent's pedigree information. Sime asserted that he did not care whether Respondent signed the "Assets Protection Admission Statement" or not. Sime presented Respondent with the "Assets Protection Admission Statement" and explained to him that that it was up to him as to whether or not to sign it. Sime denied that he had told Respondent that he would not be able to leave unless he signed the "Assets Protection Admission Statement" or that the police would be called if he did not sign it. Respondent was on the phone with his union delegate for five to seven minutes before he signed the statement.

Respondent was placed in a holding cell before the value of the boxes of condoms was determined and while Sime processed the required paperwork. Although Sime eventually learned that the two boxes of condoms were valued under \$20.00, he agreed that the price of the boxes of condoms did not have anything to do with giving Respondent the statement.

Sime agreed that while Respondent was shopping in the store he did not do anything that would make him appear suspicious. He also agreed that Respondent had picked up an open box of condoms and then placed the box back on the shelf without removing any individual condoms from it. In addition to the condoms, the child seat portion of the shopping cart contained food, vitamins and toys. Sime explained that Respondent first drew his attention when Respondent placed his coat over the child seat portion of the cart. Sime stated that Respondent and Melendez never separated from each other and that they were in the Pizza Hut restaurant eating for about 20 minutes.

Sime agreed that when he was interviewed by Department investigators he told them that Respondent had stated to him that he did not know that the condoms had not

been paid for and that he thought that Melendez had paid for the condoms. Sime stated that the reason why Respondent, not Melendez, was stopped was because Respondent was the one pushing the shopping cart toward the store exit and therefore he was in possession of the unpaid merchandise. Sime agreed that Respondent did not offer to pay for the condoms when he was stopped. Sime agreed that Respondent was not barred from returning to the store to shop. Sime agreed that if Respondent had refused to sign the "Assets Protection Admission Statement" he would still have been allowed to leave the store. Sime examined Respondent's credit card receipt with regard to the purchases Respondent made, but he could not recall the amount charged to Respondent's credit card for purchases he made.

Yosef Messina

Messina, a Target employee who is assigned as the executive team leader of asset protection, recalled that in the security office, Respondent stated that he was a police officer who makes \$50,000 a year, that he could lose his job over this incident, and that he asked questions about the process he was required to go through. Messina only spoke to Respondent briefly because Respondent accused Messina of being "abrasive." To avoid a confrontation, Messina let Bastien question Respondent. Messina heard Respondent say that he needed to report this incident and that he wanted to speak to his union delegate. Respondent was not forced to sign the "Assets Protection Admission Statement" and he was allowed to make a phone call prior to signing it. Messina heard "bits and parts" of Respondent's telephone conversation. He heard Respondent say, "I'm in Target. I made a mistake. They want me to sign some papers. What should I do?" The conversation lasted no more than two minutes. Messina agreed that no Target

security personnel told Respondent that he would not be able to leave unless he signed the "Assets Protection Admission Statement." Messina confirmed that Target does not notify the police about a shoplifting only incident where the unpaid merchandise is valued under \$20.00.

On cross-examination, Messina could not recall what Sime said to Respondent in regards to the "Assets Protection Admission Statement." Messina agreed that Respondent was made aware that even if he did not sign the statement, he would be allowed to leave. Messina further agreed that he did not tell Respondent that he could not leave without signing the statement but since Messina was "in and out" of the security office, he does not know whether anyone else told Respondent that. Messina denied that he and two other security agents had tried to physically intimidate Respondent. In addition to the three plain clothed agents who were in the security office, a uniformed security guard was "in and out" of the office while Respondent was there. Messina agreed that Respondent was detained. Messina stated that he did not examine the sales receipt regarding the items that Respondent had purchased.

Sergeant Eusebio Perez

Perez, who is assigned to the Bronx Investigations Unit, conducted the investigation regarding this incident. Perez testified that on December 15, 2011, he conducted an official Department interview of Respondent. Initially Respondent stated that he had notified the Department about this incident but later during the interview he said that he had not made an official notification. Ultimately Perez learned that Respondent did not notify the Department that he had been detained inside the Target store.

On cross-examination, Perez agreed that the Department learned about this incident when a sergeant who was assigned to the 44 Precinct reported that while he was off-duty inside the Target store shopping, a security agent approached him and told him that an off-duty officer who was also assigned to the 44 Precinct had been detained inside the store just a few days earlier. Perez agreed that Target never notified the Department and that Respondent was never arrested.

Perez was only involved in the initial phase of this investigation which was then continued under the supervision of Lieutenant William Burnicke, Bronx Investigations Unit, and Inspector Kevin Catalina, Commanding Officer, 44 Precinct. Perez agreed that the investigation initially determined that Respondent had unintentionally failed to pay for the boxes of condoms and that a Department Memorandum was prepared by Inspector Catalina (RX B) which included the statement that "It is the opinion of undersigned that the video does not depict Police Officer Tavaréz intentionally attempting to commit a larceny" (RX B p. 4).

Respondent's Case

Respondent called Dany Bastien and Christina Melendez as witnesses and testified in his own behalf.

Dany Bastien

Bastien, an executive team leader of asset protection at Target, testified that approximately eight or nine other people could watch a single person who they suspect is shoplifting. Bastien said Respondent was apprehended, and defined an apprehension as being detained for shoplifting. Respondent was brought to another room where he was

prevented from leaving. Bastien watched the security tape after Respondent was apprehended.

Bastien stated that he would not call the police regarding merchandise valued under \$20.00 but "depending on the behavior of the person we apprehended...if the person begins to get irate, we will contact law enforcement. So if the person complies, we will let the person go." Bastien told Respondent that it was his choice to sign the admission statement and he did not hear anyone else tell Respondent that if Respondent did not sign it, Respondent would not be able to leave. But Bastien agreed that he was not present during every conversation between Respondent and other security personnel. Bastien also said that if Respondent chose not to sign the statement, "He would have been cut loose as long as he did not begin to act irate."

Bastien did not tell Respondent that even if Respondent did not sign the statement, he would be free to leave. During Bastien's Department interview, Bastien recalled that Burnicke asked what would have happened to Respondent if Respondent did not sign the statement. Bastien told Burnicke, "I really don't know." Bastien explained that he had said "I really don't know" because "if you're acting irate, whether it's irate, you will still be arrested by Target," and that when Respondent told Messina that he was "being abrasive," it almost got into a shouting match which is why Bastien got in the way. At which point, as Bastien said, "We did not want to call law enforcement because he is an officer in our -- in the 44 Precinct." Bastien agreed that he did Respondent a favor by not calling the police.

Bastien stated that it is Target's policy to photograph every alleged shoplifter, over the age of 18, with the item. He agreed that two photographs of Respondent were

taken before Respondent signed the statement and while Respondent was inside of the holding cells. RX A are two photographs of Respondent and the box of condoms.

Bastien said that out of the 500 or 600 individuals that he has apprehended for alleged shoplifting, none refused to have their pictures taken. He said the statement does not have a "I refuse to sign" box.

During cross-examination, Bastien agreed that no one in the security office intimidated Respondent into signing the statement. Bastien further agreed that Respondent did not express that he needed to notify the Department about this incident.

Christina Melendez

Melendez testified that at the time of the incident in question she was in a relationship with Respondent and met with him to shop at Target. They spent over two hours in the store. Melendez said she and Respondent removed their winter coats and placed it on the child seat portion of the shopping cart and she shopped for groceries while Respondent shopped for toys for Melendez's son. She and Respondent stayed in the condom aisle for about five minutes, Respondent selected the condoms and placed them in the shopping cart.

Melendez testified that she paid \$110.00 for groceries using her EBT card and paid cash for the vitamins, panty liners and condoms (which she believed she paid for) in cash. Respondent paid for the toys with his debit card. After paying for the items and while their coats were still on the shopping cart, Melendez and Respondent went to the Pizza Hut restaurant to eat.

Melendez stated that she initially had a total of 50 items packaged in 50 small bags but she consolidated all the items into two larger shopping bags. While Melendez

consolidated the bags, Respondent walked towards the Pizza Hut restaurant. They ate at the restaurant for about 30 minutes and their coats had remained on the shopping cart.

After they ate, they put their coats on and started to walk out of the store but were stopped by Sime. Melendez recalled that Sime said "Something about stealing. He asked for my receipt. I handed it to him and he told me to wait here." Sime told Respondent to follow him. Melendez stated that Sime was "not professional" and that Sime "made a comment about stealing condoms or something like that and then we both were like 'What are you talking about?' because we had no idea what he was talking about."

Melendez waited outside of the security office for about 25 minutes and was not interviewed by anyone during that time. When Respondent exited the room and told Melendez what had happened, Melendez told him that she had paid for the condoms. Melendez stated that prior to purchasing the condoms, she and Respondent did not discuss who would pay for the condoms but she assumed that she would pay for it because Respondent only purchased toys while she paid for everything else.

During cross-examination, Melendez stated that there was no agreement between her and Respondent that she would pay for the condoms and that she did not express to Respondent that she would pay for it. She agreed that ultimately she did not pay for the condoms but thought she did.

Melendez said that after they finished eating and after Respondent retrieved his coat from the shopping cart, she observed Respondent "throwing [the condoms] in the bag." Melendez did not ask Respondent if he paid for the condoms because she thought she already paid for it. She said she paid cash for two or three items.

During redirect examination, she testified that she shops at Target with her EBT card once a month and that the register automatically separates the items that are covered by the EBT card. She placed all the merchandise on the conveyer belt and after everything was scanned, two amounts were displayed on the register. The first amount was covered by the EBT card and second amount she paid for with cash.

Respondent

Respondent, a two-year member of the Department, testified that because it was warm inside Target on December 11, 2011, as he shopped with Melendez they both took off their coats and placed their coats on the child seat portion of the shopping cart. Respondent purchased crayons, Chutes and Ladders, Candy Land and other toys for Melendez's son. Respondent had been dating Melendez for about five months. He was not paying for Melendez's household groceries. Respondent recalled that he spent about five minutes in the condom aisle while he tried to figure out the type of condom he wanted to purchase. He examined an open box of condoms and placed it back on the shelf. Respondent took one box off the shelf. Melendez took another box off the shelf and handed it to him. Respondent placed the two boxes of condoms in the child seat portion of the shopping cart. He explained that he had placed the two boxes of condoms in the child seat area because the shopping cart was full and because he did not want the boxes to sustain any damage which could affect the condoms inside.

Respondent testified that he placed the condoms on the corner of the child seat area so that they would not fall out of the cart. He had reached in through the opening of the cart where the child's leg would have gone through. His coat was on top of the cart, but it was not on top of anything or covering up anything.

At the checkout counter, Respondent recalled that because all the toys that he was going to pay for “were in the back of the shopping cart,” he “just started helping her like take out all her food” and “a whole bunch of other stuff.” When the cashier “moved the belt down a little bit there was room for me to put my items” on the belt “so I put my items on the shopping cart.”

Respondent observed Melendez make two transactions, one using her EBT card and the other using a different method of payment. Respondent used his debit card to pay \$63.00 and received \$40.00 in cash back.

After he paid for his merchandise, Respondent walked over to the Pizza Hut restaurant while Melendez placed her items in larger bags. While they ate, the shopping cart was only about a foot away from them.

When they finished eating, Respondent put on his jacket and noticed the box of condoms. He placed the condoms on top of the other items that were purchased because he assumed that Melendez had paid for it. They walked towards the exit, showed their receipts to the security guard at the door and walked past the sensors. Right before they were about to exit the store, they were approached by Sime.

Sime asked Respondent to follow him. Sime also asked Respondent if the condoms were stolen. Respondent asserted that as he followed Sime to the security office he told Sime that he was a police officer and this was a mistake and that this is not the type of behavior he engages in. Respondent followed Sime because Sime was “real aggressive” and because he did not want to escalate the situation since he believed that it was a mistake. Respondent went into the security room and encountered four other

individuals there. He was told to empty his pickets, provide identification and placed in a holding cell the size of the witness box in this trial room.

While in the holding cell, Respondent tried to call his union representative but was unsuccessful because the telephone number was disconnected. Respondent then tried to call his precinct to obtain an alternative number but was told by Bastien that he was not allowed to use his cellular phone while in the holding cell. Respondent was removed from the holding cell and photographed. Respondent was not given a choice to leave and even if he wanted to leave, he could not because he was inside of a holding cell and the door was blocked by four other men.

Respondent came out of the holding cell, observed Sime behind a desk inputting some data and Bastien and Messina "and another individual were standing behind me and they were just saying...you got to sign this paper, we can't let you go, you can't get out of here...sign this paper, it's the only way you're going to leave." Respondent said he was not told that he had a right to refuse to sign the statement. Respondent was unable to get in contact with his union representative and eventually signed the statement. He said, "I did the only thing that I thought was available for me to do, which was sign the paper and leave."

Respondent testified that he did not know what he had signed and agreed that the statement did not indicate that he had stolen condoms. He explained that he signed the statement because "I didn't know what was going on outside of the room. The door was being blocked by four other men...and they were crowding around me and yelling at me, telling me to sign this paper so I could leave." Respondent said that after he signed the

statement, the mood in the office changed, they stopped talking, opened the door and Respondent was allowed to leave.

Respondent stated that he did not notify the Department of the incident because he was informed that the statement was for Target's records only and that "there's nothing criminal here." Respondent was in the office for about 25 minutes.

During cross-examination, Respondent said he did not review the statement before he signed it because "I didn't get much chance to...with the staff at Target pretty much forcing me to sign this document." Respondent said that security did not give him an opportunity to use his phone, but he did use it without security realizing it. However, security told him to get off his phone when they noticed. Respondent did not know if the police would have been contacted if he did not sign the statement. Respondent thought that he would be in the office for an "undisclosed amount of time" if he did not sign the statement.

Respondent disagreed that the two boxes of condoms were concealed under his jacket. Respondent agreed that Melendez purchased the vitamins with cash. Respondent stated that he is now aware that he was supposed to notify the patrol supervisor about this incident. Respondent stated that he reported to work the same day but he did not consult a veteran officer or a supervisor about reporting this incident to the Department.

FINDINGS AND ANALYSIS

Under Specification No. 1, it is charged that while Respondent was off-duty on December 11, 2011, he failed to notify the Department after he had been taken into custody by store security personnel at a Target store in Bronx County for leaving the

store with merchandise he had not paid for. Under Specification No. 2, it is charged that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by exiting the Target store with merchandise that he knew had not been paid for.

I will initially analyze the evidence offered by the Department to attempt to prove that Respondent exited the Target store with merchandise that he knew had not been paid for. Respondent does not dispute that when he was stopped by store security personnel as he and Melendez were exiting the Target store, the shopping cart he was pushing contained two boxes of condoms. Respondent denied that he knew at that point in time that these two boxes of condoms had not been paid for. Respondent testified that he believed that Melendez had paid for the condoms. Thus, the issue presented here is whether the Department met its burden of proving that Respondent knew that the two boxes of condoms had not been paid for.

To attempt to prove that Respondent knew that the two boxes of condoms had not been paid for, the Department offered in evidence a CD video consisting of a compilation of recordings made by the store's surveillance cameras (DX 1) which depicts some, but not all, of Respondent's movements inside the store as recorded by surveillance cameras. I find that this CD recording produced by the store's surveillance camera is not dispositive on the central question of whether or not Respondent knew that the two boxes of condoms had not been paid for. Respondent's actions as depicted on the video tape do not show him trying to secret the boxes at the point when they were removed from the shelf, or when they were placed in the shopping cart or at the checkout counter. I agree

with the conclusion reached by Inspector Catalina that “the video does not depict” Respondent “intentionally attempting to commit a larceny” (RX B, page 4, paragraph 8).

Also, the size, price, and number of items alleged to have been stolen by Respondent differentiate this situation from the facts presented in other cases where members have been found guilty of shoplifting at a Target store. Here it is not disputed that because the two condom boxes were small (RX A) and had been placed in the infant seat area of the cart which was partially covered by Respondent’s and Melendez’ coats, the cashier did not notice the boxes. Thus, Respondent and Melendez could also have overlooked the boxes, as the cashier did, as they unloaded the numerous other items inside the cart and placed them on the cashier’s conveyer belt. Also, since the store price of the two boxes of condoms was only \$11.03, the Department is implicitly arguing that Respondent was willing to risk losing his job just to save \$11.03.

The size, price, and number of items alleged to have been stolen here differs substantially from Case No. 84497/08 (September 22, 2010) where a member stole a number of items of electronic equipment from a Target store; and Case No. 84586/08 (February 23, 2010) where a member was found guilty of stealing multiple bottles of lotion, multiple items of clothing, and multiple CDs from a Target store.

Moreover, Respondent’s undisputed post-check out action of remaining inside the store to eat at a Pizza Hut supports his claim that he was not aware that the two boxes of condoms had not been paid for. If Respondent knew that the condoms had not been paid for and that he had just committed a larceny, it is likely that he would have left the store as quickly as possible. Thus, Respondent’s action of remaining inside the store for 20

minutes after he and Melendez had passed through the checkout counter is inconsistent with what would normally be expected of a thief.

To attempt to prove that Respondent knew that the two boxes of condoms had not been paid for, the Department also offered in evidence the store's "Admission Statement" (DX 2) which Respondent signed. The Department argued that by signing this "Admission Statement" Respondent voluntarily acknowledged that he had in fact attempted to leave the store in possession of two boxes of condoms that he knew had not been paid for. Respondent asserted that he "didn't get much chance to" review the boiler-plate language typed on this "Admission Statement" before he signed it and that he only signed it because he was coerced into signing it by security agents who threatened that if he refused to sign it he would not be allowed to leave the store.

The "Admission Statement" is a sparsely-worded, one-page document which contains the easily discerned phrases "I hereby admit to the theft of" and "I make this admission voluntarily." As a result, I reject Respondent's claim that because he supposedly "didn't get much chance to" review the document he really was not cognizant at the time he signed it that he was voluntarily admitting to theft. I also reject Respondent's claim that he was coerced into signing it.

Rather, I find that the truth as to why Respondent signed a document which he knew contained an admission that he had committed a theft is to be found in the testimony of Sime. I credit Sime's testimony that he heard Bastien tell Respondent that if he agreed to sign the "Admission Statement" his admission of theft would be kept confidential, he would be released and his detention at Target would not be reported to the Department. Respondent was aware that if he refused to sign the "Admission

Statement” he could be arrested on a charge of petit larceny. I find that Respondent’s justifiable concern that as a probationary police officer he could be dismissed from the Department based solely on a suspicion that he had shoplifted led him to sign the “Admission Statement” and take the leap of faith that he could rely on Bastien’s promise. As it turned out, Bastien kept his word and the Department, as Respondent had hoped, would never have learned that he had been detained inside Target on an allegation of shoplifting had it not been for the happenstance event that while a sergeant assigned to the 44 Precinct was inside the store shopping a security agent casually mentioned to him that an officer who was also assigned to the 44 Precinct had recently been detained inside the store.

In conclusion, I find that Respondent’s act of signing the “Admission Statement” was not a genuine admission of theft but, rather, constituted a desperate attempt to keep the fact that he had been detained at the store and accused of stealing confidential. Based on the above analysis, Respondent is found Not Guilty of Specification No. 2.

With regard to the charge under Specification No. 1, that Respondent failed to notify the Department after he had been taken into custody by store security personnel at the store, as discussed above, I have found that the only reason Respondent signed the store’s “Admission Statement” was because the store’s security supervisor assured him that if he agreed to sign it the incident would not be reported to the Department. Thus, by not personally notifying the Department, Respondent was hoping that the Department would never learn that he had been detained at the store and accused of shoplifting.

That Respondent did not want the Department to know that he had been detained on suspicion of theft is reflected by the fact that after he was released from Target he did not ask a supervisor or a senior officer whether he should report his detention.

Respondent is found Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on July 6, 2010. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of having failed to notify the Department that he had been taken into custody by store security personnel at a Target store who accused him of leaving the store with merchandise he had not paid for.

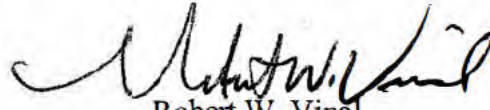
The Assistant Department Advocate recommended that Respondent be dismissed from the Department.

Respondent's action of failing to notify the Department that he had been taken into custody by security personnel at a retail store and accused of leaving the store with merchandise he had not paid for constitutes serious misconduct. Moreover, at the time of this incident, Respondent was a Probationary Police Officer.

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115(d) of the NYC Administrative Code for a period of one year,

during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing. It is further recommended that Respondent forfeit 30 vacation days.

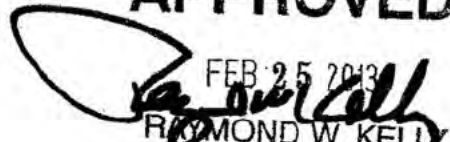
Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

APPROVED



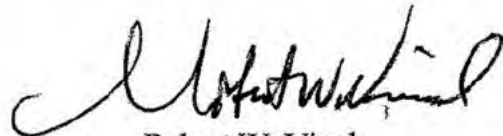
FEB 25 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSE TAVAREZ
TAX REGISTRY NO. 949716
DISCIPLINARY CASE NO. 2012-6752

The Respondent received an overall rating of 3.5 on his two most recent six-month performance evaluations, and 3.0 on his first six-month performance evaluation. He has no medals. [REDACTED]
[REDACTED]

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner [REDACTED] Trials